

[10191/1969]



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of:

PELZ et al.

: Examiner: Jeffrey R. West

For: SERVICE ELEMENT IN
DISTRIBUTED SYSTEMS

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: Art Unit: 8032

Filed: March 21, 2002

Serial No.: 09/913,992 ✓

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Michelle Carniaux (Reg. No. 36,098)

APPEAL BRIEF TRANSMITTAL

SIR:

Transmitted herewith for filing in the above-identified patent application please find
an Appeal Brief pursuant to 37 C.F.R. § 1.192(a), in triplicate.

Please charge the Appeal Brief fee of \$340.00, and any other fees that may be
required in connection with this communication to the deposit account of **Kenyon &
Kenyon**, deposit account number **11-0600**. A duplicate of this paper is attached for this
purpose.

Dated: 12 OCT 2004

Respectfully submitted,

By: 

Richard L. Mayer
Registration No. 22,490

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Atty's Signature

MICHELLE M. CARNIAUX
KENYON & KENYON

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 1.192(a)

SIR:

On August 13, 2004, Appellants submitted a Notice of Appeal from the final rejection of claims 11-23 contained in the Final Office Action issued by the U.S. Patent and Trademark Office (the "PTO") on May 3, 2004 in the above-identified patent application.

In accordance with 37 C.F.R. § 1.192(a), this brief is submitted in triplicate in support of the appeal of the final rejection of claims 11-23. For at least the reasons set forth below, the final rejection of claims 11-23 should be reversed.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH, Postfach 30 02 20, 70442 Stuttgart, Federal Republic of Germany. Bosch is the assignee of the entire right, title and interest in the present application.

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2. **RELATED APPEALS AND INTERFERENCES**

There are no interferences or other appeals related to the present application.

3. **STATUS OF CLAIMS**

Claims 11-14 and 17-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,185,491 (the Gray patent) in view of U.S. Patent No. 6,246,935 (the Buckley patent).

Claims 15, 16, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 6,330,499 to Chou et al. (the Chou patent).

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 4,866,713 to Worger et al. (the Worger patent).

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 4,843,557 to Ina et al. (the Ina patent).

Appellants appeal from the final rejection of claims 11-23. A copy of all of the pending claims is attached hereto in the Appendix.

4. **STATUS OF AMENDMENTS**

An Amendment After Final Office Action was filed in the PTO on June 28, 2004. In an Advisory Action dated July 22, 2004, the Examiner indicated that the proposed amendments to the drawings in the Amendment After Final Office Action have been approved.

5. **SUMMARY OF THE INVENTION**

The present invention relates to service element and a distributed system such that the service element performs configurations, upgrades, maintenance, and emergency functions on the components of the distributed system. Hence, the distributed system is able to automatically adjust to new conditions. (Specification, page 1, lines 22-26).

Also, the present invention provides that operation by a user is considerably simplified, so that the training of the users may be reduced to a minimum. Furthermore,

maintenance work may be performed by the user alone, so that the distributed system acquires a high degree of independence and intelligence. (Specification, page 2, lines 1-6).

The service element (e.g., Fig. 1, element 2) detects new components of the distributed system and then automatically integrates and configures them into the distributed system, or, if this is not possible, prompts a user to do this. Also, the service element subjects the software running on the components of the distributed system to an error diagnosis and possibly corrects this software. The available software is checked for errors by the user and, if necessary, is repaired. This saves the user a considerable amount of time. (Specification, page 2, lines 8-16).

Additionally, the present invention provides that the service element loads new software versions of software running on individual components of the distributed system via a communication element available in the distributed system. The service element checks the new software versions in order to configure them for the specific component. The user is freed from the work-intensive updating of the software, which is often done in short intervals. This saves a considerable amount of work. (Specification, page 2, lines 18-24).

Furthermore, the present invention provides that the service element is utilized by a service provider to perform a remote diagnosis of faulty components, if the service element itself is not able to perform a correction. This frees the user from contacting an external service in response to a fatal error and to eliminate this error. (Specification, page 2, lines 26-30).

Also, the present invention provides that the service element transmits information regarding the state of the distributed system to a user via a display of a component in the distributed system. Hence, the user is continuously informed about the state of the distributed system and about actions that the user must perform. (Specification, page 3, lines 1-4).

6. ISSUES

A. Whether claims 11-14 and 17-20 which stand rejected under 35 U.S.C. § 103 are patentable over the Gray patent in view of the Buckley patent.

B. Whether claims 15, 16, and 21 which stand rejected under 35 U.S.C. § 103 are patentable over the Gray patent in view of the Buckley patent and further in view of

the Chou patent.

C. Whether claim 22 which stands rejected under 35 U.S.C. § 103 is patentable over the Gray patent in view of the Buckley patent and further in view of the Worger patent.

D. Whether claim 23 which stands rejected under 35 U.S.C. § 103 is patentable over the Gray patent in view of the Buckley patent and further in view of the Ina patent.

7. GROUPING OF CLAIMS

Issue A:

Group I: 11-14 and 17-20

With respect to Issue A, the claims of Group I stand or fall together.

Issue B:

Group I: Claims 15, 16, and 21.

With respect to Issue B, the claims of Group I stand or fall together.

Issue C:

Group I: Claim 22.

With respect to Issue C, the claim of Group I stands or falls alone.

Issue D

Group I: Claims 23.

With respect to Issue D, the claim of Group I stands or falls alone.

8. ARGUMENTS

A. Issue A

1. Group I

Claims 11-14 and 17- 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent.

It is respectfully submitted that the Gray patent and the Buckley patent, whether

taken alone or combined, do not render obvious any of claims 11 to 14 and 17 to 20, for at least the following reasons.

As regards the obviousness rejections, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it must also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the "problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem", Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998). The prior art simply does not address the problems met by the subject matter of any of the rejected claims.

Claims 11 and 19 provide for a service element and a distributed system including other components that are independent of one another and interconnected by a bus, the service element includes: an arrangement for configuring the other components, *an arrangement for upgrading the other components, an arrangement for maintaining the other components, and an arrangement for performing an emergency function.*

In accordance with the example embodiment described in the present application, "the service element of the present invention and the distributed system of the present invention have the advantage that the service element is able to carry out configurations, upgrades, maintenance, and, if necessary, emergency functions on the components of the distributed system." (See Specification, page 1, lines 22-25).

In contrast, the Gray patent purportedly concerns a vehicle control computer system and device interfaces. A vehicle control center, with a processor and memory, provides user access to devices operating within the vehicle. The manufacturer of the devices provides a device interfaces stored within the device. When a device is installed in the vehicle, the processor or other control element of the vehicle control center becomes aware of the installation and requests or otherwise receives the stored device interface from the device. The vehicle control center uses the device interface as received or replaces it with a different interface already stored in memory. (Abstract, lines 1-12). Furthermore, the Gray patent states the vehicle control center may be used to control other components including "radar, air bag activation and status, video cameras, emergency rescue, alarms, anti-theft system, odometers, gyroscope, route guidance, access control, location transponder, video games, an internet connection, a digital multimedia broadcasting receiver, telephone receivers, digital video

decoders and recorders, a digital audio broadcasting receiver, voice recognition systems, a cellular telephone handset either directly connected or linked via infrared, a digital cell phone module and a gateway to other buses.” (Col. 3, lines 52-65).

Accordingly, the Gray patent does not identically disclose (or even suggest) the features in which *an arrangement maintains other components* and *an arrangement performs an emergency function* in a distributed system, as provided for in the context of claims 11 and 19. The Gray patent merely indicates that when a device is installed in a vehicle, a vehicle control center becomes aware of the installation and requests or otherwise receives a stored device interface from the device such that the vehicle control center uses the device interface as received or replaces it with a different interface already stored in memory. The Gray patent only provides for configuration and upgrading of devices via a vehicle control center that may be used to control various devices of the vehicle (e.g., air bag activation, etc.). The Gray patent does not describe that the vehicle control center, itself, performs an emergency function. Nothing in the Gray patent identically discloses (or even suggests) the claim features of an arrangement for maintaining other components in a distributed system and an arrangement for performing an emergency function, as provided for in the context of claims 11 and 19.

Claims 11 and 19 further recites *an arrangement for upgrading the other components* (the other components being a number of independent components of a distributed system). In connection with this feature, the Examiner indicates that the Gray patent does not disclose this feature, and instead relies on the Buckley patent. (Final Office Action, page 4-5).

The Buckley patent, however, does not describe a component that upgrades other independent components in a distributed system. In the sections of the Buckley patent relied on by the Examiner (col. 10, lines 27-33), the Buckley patent apparently describes upgrading firmware of the CIPN microcomputer via an external device (via an infrared link). This section does not describe a component of a distributed network having the ability to upgrade a number of independent components of the distributed system, as required by claims 11 and 19.

For the foregoing reasons, the Gray patent and the Buckley patent, whether taken alone or combined, do not render obvious claims 11 and 19.

Claims 12-14, 17, and 18 depend from claim 11, and claim 20 depends from claim 19. According, the arguments presented above in connection with claims 11 and 19

apply equally to claims 12-14, 17, 18 and 20.

It is therefore respectfully submitted that the rejections as to claims 11-14 and 17-20 should be withdrawn.

B. Issue B

1. Group I

Claims 15, 16, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Chou patent.

Claims 15, 16, and 21 depend from allowable claim 11. It is therefore respectfully requested that the obviousness rejections be withdrawn since claims 15, 16, and 21 are allowable for essentially the same reasons as claim 11, and since the Chou patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Chou patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claims 15, 16, and 21 are allowable.

It is therefore respectfully requested that the rejections as to claims 15, 16, and 21 be withdrawn.

C. Issue C

1. Group I

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Worger patent.

Claim 22 depends from allowable claim 11. It is therefore respectfully requested that the rejection be withdrawn since claim 22 is allowable for essentially the same reasons as claim 11, and since the Worger patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Worger patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claim 22 is allowable.

It is therefore respectfully requested that the rejection as to claim 22 be withdrawn.

D. Issue D

1. Group I

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Ina patent.

Claim 23 depends from allowable claim 11. It is therefore respectfully requested that the rejection be withdrawn since claim 23 is allowable for essentially the same reasons as claim 11, and since the Ina patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Ina patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claim 23 is allowable.


It is therefore respectfully requested that the rejection as to claim 23 be withdrawn.

9. CONCLUSION

For at least the reasons indicated above, Appellants respectfully submit that the drawings and specification meet all of the requirements for patentability, and that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the invention recited in the claims of the present application is new, non-obvious and useful. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted, 

Dated: 12 Oct 1997

By: 
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APPENDIX

Claims 1-10 (Canceled).

11. (Previously Presented) A service element that belongs to a distributed system as a component, the distributed system further including other components that are independent of one another and interconnected by a bus, comprising:

- an arrangement for configuring the other components;
- an arrangement for upgrading the other components;
- an arrangement for maintaining the other components; and
- an arrangement for performing an emergency function.

12. (Previously Presented) The service element according to claim 11, further comprising one of:

- an arrangement for detecting a new component and for integrating the new component into the distributed system; and
- an arrangement for operating a display device to represent information about a configuration.

13. (Previously Presented) The service element according to claim 12, further comprising:
an arrangement for performing an error diagnosis of software running on the other ones of the plurality of components; and

- an arrangement for, in the case of an error, correcting the software within a framework of maintenance.

14. (Previously Presented) The service element according to claim 13, further comprising:
an arrangement including a communication element and for loading new software for the plurality of components.

15. (Previously Presented) The service element according to claim 14, further comprising:
an arrangement for allowing a remote diagnosis of the plurality of components of the distributed system.

16. (Previously Presented) The service element according to claim 15, further comprising:
an arrangement including a communications element and for, in the case of a serious functional error, contacting a service provider.
17. (Previously Presented) The service element according to claim 11, further comprising:
an arrangement for operating a display to transfer information about the distributed system to a user of the distributed system.
18. (Previously Presented) The service element according to claim 11, further comprising:
an arrangement for checking newly loaded software in accordance with a predetermined value.
19. (Previously Presented) A distributed system, comprising:
a bus; and
components connected by the bus and that are independent of each other, the components include a service element that includes:
an arrangement for configuring other components,
an arrangement for upgrading the other components,
an arrangement for maintaining the other components, and
an arrangement for performing an emergency function.
20. (Previously Presented) The distributed system according to claim 19, wherein:
at least one of the plurality of components includes a communication element.
21. (Previously Presented) The service element according to claim 14, wherein the communications element includes a transceiver station communicating over a radio channel.
22. (Previously Presented) The service element according to claim 13, wherein the error diagnosis is performed at a predefined time interval.
23. (Previously Presented) The service element according to claim 11, wherein the bus includes one of an electrical wiring system, an optical wiring system, and a radio based system.